Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

FRANKLIN D. VIPPERMAN

Plaintiff/Petitioner,

VS.

CARLOS CONCHA; JOHN COMPSTON;
CHUCK GATES; JEFFREY JEANQUART; and
NEVADA DIVISION OF PAROLE AND PROBATION;

Defendants/Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

FRANKLIN D. VIPPERMAN
3000 SO. SANDHILL RD. # 103
LAS VEGAS, NEVADA 89121
702-207-6356
In Pro se

65 pp

QUESTIONS PRESENTED

Question One

WHETHER DIVISION (Department) OF PAROLE AND PROBATION CAN BE HELD LIABLE UNDER AUTHORITY OF 42 USC Sections 1983, 1985(3), 1986, FOR CONSTITUTIONAL VIOLATIONS PURSUANT TO ITS CUSTOMS, PRACTICES, POLICIES AND PROCEDURES?

Question Two

WHETHER ADMINISTRATORS AND/OR AGENTS OF DIVISION OF PAROLE AND PROBATION CAN BE HELD LIABLE UNDER AUTHORITY OF 42 USC Sections 1983, 1985(3), 1986, FOR THEIR CONSTITUTIONAL VIOLATIONS WHILE ACTING IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES?

Question Three

WHETHER PAROLE BOARD MEMBERS AND/OR AGENTS CAN BE HELD LIABLE UNDER AUTHORITY OF 42 USC Sections 1983, 1985(3), 1986, FOR THEIR CONSTITUTIONAL VIOLATIONS PURSUANT TO THEIR CUSTOMS, PRACTICES, POLICIES, AND PROCEDURES?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

ISSUES PRESENTED TO NINTH CIRCUIT COURT OF APPEALS

Issue One

Whether the lower Federal court conspired with State courts and state officials to deny and deprive the Plaintiff/Appellant of his constitutional rights

Issue Two

Whether the lower Federal and State courts erred by denying and depriving the Plaintiff/Appellant of adequate, meaningful, and effective access to the courts

Issue Three

Whether the lower Federal and State courts erred by denying and depriving the Plaintiff/Appellant of Habeas Corpus relief

Issue Four

Whether the lower Federal court erred by denying and depriving the Plaintiff/Appellant of Default Judgment

Issue Five

Whether the lower Federal court erred by denying and depriving the Plaintiff/Appellant of Preliminary Injunction relief

Issue Six

Whether the lower Federal court erred by denying and depriving the Plaintiff/Appellant of Declaratory Judgment

Issue Seven

Whether the lower Federal court erred by granting the Defendant's/Appellee's motions to dismiss

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

The MEMORANDUM of the United States court of appeals for the Ninth Circuit Affirming the lower federal court appears at Appendix A to the petition and is unpublished

The ORDERS and JUDGMENTS of the United States district court appears at Appendix B, C, and D, to the petition and are unpublished.

JURISDICTION

The date on which the United States Court of Appeals for the Ninth Circuit decided my case was July 25, 2003. Appendix A.

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1). And this petition is timely filed.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Violations of Constitutional Rights afforded to the Plaintiff/Petitioner through the First, Fourth, Fifth, Sixth, and Fourteenth Amendments to the Constitution Of The United States. And State and Federal laws.

STATEMENT OF THE CASE

Franklin Delano Vipperman, Plaintiff/Petitioner, herein after Vipperman, was arrested while driving into his home driveway in the late evening hours of Friday, April 20, 1973, in Las Vegas, Nevada, by two plain clothed detectives, one black, one white, driving an unmarked late model gold colored 4 door Chevrolet. Vipperman's wife was in his house, and he had just spoken to her over the telephone and told her he was on his way home. Vipperman first believing the police were individuals his ex business partner in a small used car lot William (Frenchy) Parquette had after him, thought they were there to harm him. When he finally realized they were probably police, he began asking them why he was being arrested. They refused to answer him, and only responded with citing over and over again, Vipperman's rights under Miranda.

Vipperman was taken to a hospital whereat his blood was forcibly extracted from him by a nurse, while he was restrained by the two arresting police officers. One of whom's name was **Dallas Kinney: (Note spelling).**
The white arresting officer:

Vipperman was then incarcerated in the Las Vegas City Jail. Two days later Vipperman was finally informed of why he had been arrested and incarcerated, by an attorney Ray Sutton, whom Vipperman had an appointment with that coming Monday to dissolve the partnership between Vipperman and Parquette. Who further informed Vipperman that there was nothing to be concerned about because he had checked the records, and found the police had absolutely nothing against him, and he, the attorney would have Vipperman out of jail Monday morning. Sunday being Easter.

Vipperman's nephew had just gotten to Las Vegas and found that Vipperman had been arrested and charged with open murder. Who then contacted Vipperman's brothers in

Michigan. Who flew to Las Vegas and hired **Harry Eugene Claiborne** to represent Vipperman. They paid Harry E. Claiborne the sum of about $6,500.00 to defend Vipperman and to represent him at a Preliminary Hearing, which was required by Nevada law within 30 days after arrest. And [if] Vipperman was bound over for trial, they were to pay Claiborne an additional $6,500.00 to represent Vipperman at trial. Which Nevada law required a quick and speedy trial within 90 days after arrest.

Harry Eugene Claiborne, pursuant to absolute greed, for the egregious purposes of obtaining the additional $6,500.00 from Vipperman's family [if] Vipperman was bound over for trial, allowed the State of Nevada to deny and deprive Vipperman of a timely State required Preliminary hearing for six (6) months while Vipperman remained illegally and unconstitutionally incarcerated in the Clark County Jail. **Record On Appeal (ROA pp. 294-296).** While Harry E. Claiborne was acting in collusion and conspiracy with prosecutors, to allow them time to come up with a 100% false alleged eye witness, one **David Allan McPeake. Which is common pace in Las Vegas, Nevada: For there never has been a trial in the State Of Nevada, wherein the State did [not] present false witnesses they made "deals" with, and subornated to commit perjury against an accused.**

During a clandestine Preliminary Hearing held on Sept.5, 1973, **(ROA pp. 298-301)** the State's subornated traveling professional Pathologist **John Wallace Graham** testified as to the cause of death of William Parquette that;

> **"Cause of death was due to the loss of blood in the left chest and abdomen, which resulted from the multiple perforations of the left lung and spleen."**
> **(ROA p. 300 L's 8-10).**

And John Wallace Graham's blatantly false and fabricated **Autopsy Report** from the California Toxicology Service, Inc., Los Angeles, California, shows that;

"II. Non-penetrating shotgun wound left forearm and abdomen." And;

"2. There is a 1 ½ " round non-penetrating shotgun wound of the left lower abdominal quadrant with an irregular scalloped border. * * * There is an associated shotgun pellet injury on the lateral aspect of he left thigh comprising of 10 to 12 pellet wounds." (ROA pp. 302-303).

Harry E. Claiborne, at the Preliminary Hearing, had in his possession, in his hands, police department photographs of the Scene Of The Crime and Autopsy photographs and Report that proved far-far beyond any type of reasonable doubt, that both John Wallace Graham and David Allan McPeake were both false witnesses, committing blatant perjury for the State, who had been subornated to commit perjury by police and prosecutors.

For the court records and photographs now in the possession of the Ninth Circuit Court Of Appeals overwhelmingly prove far beyond any type of doubt, that William Parquette was shot **point blank** from less than six inches away, and the shot crossed the top of his left forearm tearing out a chunk of flesh, and directly into his abdomen and completely through the outer walls and into the interior of his stomach. Which was the **[death shot]**. And a second shot was fired from many more feet away, which struck him in his left side, left arm, and left thigh. Which could not have possibly caused death. Thereby proving far beyond doubt that **[all]** of David Allan McPeake's testimony was blatantly false, and subornated by police and prosecutors.

Following the farce, sham, and pretense of the Preliminary Hearing, Harry E. Claiborne received the additional $6,500.00

from Vipperman's family to represent Vipperman at trial, and he then completely and totally deserted Vipperman. And left him to remain illegally and unconstitutionally incarcerated in the Clark County Jail for another year and a half (1 ½ years).

Harry E. Claiborne then assuming that no man could endure the Clark County Jail for two years (2 years) without breaking, made a "Deal" with the outgoing District Attorney who had just lost reelection, to have Vipperman confess to Second Degree Murder. And he had not even bothered to discuss same with Vipperman. When Claiborne informed Vipperman that [he] had made a deal to have Vipperman confess to murder, Vipperman refused same. Harry E. Claiborne then threatened Vipperman that if Vipperman did not take the "Deal", that he would no longer represent Vipperman before the court. Vipperman then fired Harry E. Claiborne.

Vipperman then hired Jeffrey D. Sobel to represent him at trail. And was only allowed sixty (60) days to piece together a defense which had laid dormant for two long years and had never been investigated by Harry E. Claiborne. Even though Vipperman had by absolute accident and fate, came across indisputable exculpatory evidence which proved Vipperman had been framed for murder by the Las Vegas Police, and the Clark County District Attorney's Office, and had furnished same to Harry E. Claiborne. Which Claiborne had absolutely ignored and covered-up.

There have been two (2) different trials in his horrendous miscarriage of justice case. The first farce, sham, pretense, and mockery of justice trial was reversed by the Nevada Supreme Court on direct appeal. **At Vipperman vs. State, 547 P.2d 683 (NV. Sp. Ct. 1976). (ROA pp. 526-528).**

During the first trial in 1975, a **Norman Finley Patchell** testified that a Jack Heath, (Parquette's secret partner) had confess to him, Patchell, that he, Jack Heath, a woman named

Carol, and a body shop man murdered the victim William Parquette, and framed Vipperman. **(ROA pp. 379-395).** And Police Officer **Ted Veach** had to be subpoenaed from out of state as a hostile witness to corroborate parts of Norman Patchell's testimony. **(ROA pp. 396-402).**

Nancy Parker testified to the facts that she was walking past the car lot at the time and place the crime took place, when she heard two (2) shots, with "just a grunt in between". She became scared and began running home which was just around the corner on the next street. When she came to the alley behind the car lot, she stopped and looked down the alley and saw a very big 6' 4" or 6' 5" black man (Vipperman is slight and white) with a big gun in his hands walking away from the back gate of the car lot where the crime took place, get into a car, and drive right past her. She then ran home and told her mother **Dorothy Blosser,** and her brother **James Blosser**, what she had seen and heard. And then she telephoned the police. The police came to their home minutes later and they all gave the police a full report of what had happened. And that police report was later destroyed by police and prosecutors in blatant violation of Nevada Revised Statute **(N.R.S. 199.412) which prohibits the Destroying of evidence.** And Nancy Parker and her mother Dorothy Blosser, and brother James Blosser, were [never] contacted by the police again. **(ROA pp. 404-412).**

Following Nancy Parker's trial testimony, the police and prosecutors arrested her, held her in jail incommunicado so she could not be found by defense/trail attorney, while police officer **Chuck Lee** threatened her all evening and night to change her testimony. But, she refused: So, police officer Chuck Gates then took the stand the following morning and committed blatant perjury for the prosecutors by testifying that Nancy Parker had recanted her testimony to him. Which Nancy Parker vehemently denied doing. **(ROA pp. 413-416).**

Some years later the despicable police officer Chuck Lee was caught in an illegal wire tapping case with the infamous Harry E. Claiborne, Vipperman's original alleged defense attorney in this abominable case, and was discharged from the Las Vegas Police Department. **(ROA p. 417).** And currently owns and operates a brothel in Pahrump, Nevada, close to Las Vegas.

Dorothy Blosser, mother of Nancy Parker, corroborated all of Nancy Parker's testimony. **(ROA pp. 418-423).**

James Blosser, brother of Nancy Parker was scheduled to testify and corroborate Nancy Parker's testimony at trial, but the police and prosecutors threatened him to the effect that if he showed up at court to testify, that they in turn would trump up charges against him that would lead to his incarceration. Which caused James Blosser to be afraid to testify for the defense. **(ROA p. 424 L's 30-32, p. 425 L's 1-6).** In blatant violation of the State's Laws of **Obstruction Of Justice, and preventing or dissuading witnesses from attending. (NRS 199.230. And Coercion (NRS 207.190).**

Tommy Martin was just outside the courtroom ready to testify for the defense that his mother had informed him all about Nancy Parker hearing the two shots, seeing the big black man in the alley with a "big gun" in his hands. And Nancy and her mother Dorothy Blosser and brother James Blosser originally contacting the police the night of the crime, what they told police, and never being contacted again by the police. Martin was arrested **in the presence of the recessed jury**, slammed around the hallway, hand cuffed, falsely and loudly accused of attempting to bribe a witness, and incarcerated incommunicado so he could not be found by the defense to testify. And later being released from incarceration **[after]** the trial was over, and it was too late for him to testify. And [no] charges were ever filed against Martin. **(ROA p. 426 L. 32, p. 427 L's 1-8). In blatant violation of NRS 199.230 supra.**

Robert Davis Jr. was able, available, and willing to testify to the facts that the State's known to them to be false witness **David Allan McPeake** had came to his apartment shortly after Parquette's death, and informed him that very night that he, McPeake, **did not see who had shot Parquette, or know who had shot Parquette. (ROA p. 403).** And ineffective trial/appeal counsel Jeffrey D. Sobel while acting in collusion and conspiracy with police, prosecutors, and trial judge, failed and otherwise refused to bring Robert Davis Jr. forward to testify for the defense.

Vipperman testified at great length in his own defense in both trials, and informed the jury that he personally went to the Las Vegas Police and informed them that William Parquette was dealing in stolen cars. He further telephoned the Department Of Motor Vehicles, and the Federal Bureau Of Investigation (F.B.I.) and informed both of those offices that Parquette was dealing in stolen cars. The F.B.I. and D.M.V. both caught Parquette, Jack Heath, Carol Smith, and David Allan McPeake [all] dealing in stolen cars. Parquette then threatened Vipperman to the effect that he knew it was Vipperman that had turned him into the authorities, and the only thing Vipperman was going to get out of the partnership **"was a face full of desert": Which in Las Vegas simply meant, he was going to kill Vipperman or have Vipperman killed, and discarded into the desert. (ROA pp. 431-449).** When Parquette was killed, the F.B.I. and D.M.V. turned the case over to the Las Vegas Police.

When Vipperman attempted to corroborate his testimony with Agents from the F.B.I., D.M.V., and Police Department Records Clerk who brought with her the records the police had on file concerning the stolen car racket Parquette, Heath, Smith, and McPeake were all four together involved in. And the official records of the stolen cars they had found in their possession at their places of residence and places of business. The biased and prejudiced trial judge wile acting in collusion

and conspiracy with police and prosecutors, **denied and deprived** Vipperman of allowing his defense witnesses from the F.B.I., D.M.V., and Police Records Clerk, to testify in his behalf for the defense. **(ROA pp. 450-468).** And further allowed the prosecutors to blatantly lie and falsely represent to the jurors during summation, that those witnesses never existed in the first instance. That they were only a figment of Vipperman's imagination like everything else he had testified to. Otherwise, they would have came forward and testified. Thereby making Vipperman appear to be untruthful in the eyes and minds of the jury.

The biased and prejudiced trial judge Carl J. Christensen further, but not conclusive of, while acting in collusion and conspiracy with prosecutors and police, wilfully, wantonly, maliciously, illegally, and unconstitutionally impeached the entire testimonies of **Norman Patchell and Nancy Parker**, and Ordered the jury to disregard their entire testimonies.

In between Vipperman's two farce, pretense, and mockery of justice trials, the police and prosecutors [again] threatened Vipperman's defense witnesses to prevent them from coming forward and testifying for the defense. And ineffective trial/ appeal counsel Jeffrey D. Sobel refused and failed to issue compulsory process to compel their attendance, and thereby turned Vipperman's second trial into a blatant farce, sham, pretense, and mockery of justice by not presenting a single crucial witnesses for the defense. **(ROA pp. 488-498).** And further and additionally, failed and refused to bring to the attention of the Nevada Supreme Court on direct appeals, the horrendous, illegal, and unconstitutional acts and actions of police, prosecutors, and trial judge, that denied and deprived Vipperman of his liberty, property, and fair trials. In blatant disregard for Vipperman's constitutional rights of due process and the equal protection of the laws, both state and federal.

The Nevada Department Of Parole And Probation failed and otherwise refused to investigate any portion of Vipperman's history, character, and good reputation in the business and the community. **(ROA pp. 476-487).** And chose instead to act pursuant to its standard **illegal, and unconstitutional, customs, practices, policies, and procedures. In concert and collusion with police, prosecutors, and judges of Las Vegas, Nevada.**

A Department Of Parole And Probation officer, **Willard B. Allen,** appeared at the Clark County Jail shortly after Vipperman's first conviction, and questioned Vipperman. He went along asking questions until Vipperman got to the part of his life that he went into business with William Parquette. Willard B. Allen then shocked Vipperman by stating; **"And that was the man you murdered".** When Vipperman denied the killing of William Parquette, Willard B. Allen then stated; **"You know, if you don't confess to this murder, [we] will recommend the maximum sentence, and you will never get out of prison:"**

Vipperman's attorney Jeffrey D. Sobel had already informed Vipperman that the Agent, and the Department Of Parole And Probation had already been informed by him that Vipperman was taking an Appeal. Therefore the Department Of Parole And Probation were **[not]** to discuss the case with Vipperman during his pre sentence hearing. **(ROA pp. 523-526).**

Nevertheless; because Vipperman would not confess to the crime he had been framed for, the Nevada Department Of Parole And Probation, while acting in concert and collusion with police, prosecutors, and trial judge, maliciously, illegally, and unconstitutionally, submitted to the trial judge, a Pre Sentence Report, which contained known to the Department Of Parole And Probation, blatantly false information. And maliciously recommended a maxim sentence for Vipperman because he would not confess to the crime, and thereby clean-

up all the horrendous illegal and unconstitutional acts and actions of their concerts and cohorts of the police, prosecutors, court, and judges.

As shown above, the State's known to them to be false, and subornated traveling professional testifying alleged pathologist John Wallace Graham, testified at Vipperman's Preliminary Hearing on September 5, 1973, as to cause of death that;

"Cause of death was due to the loss of blood in the left chest and abdomen, which resulted from multiple perforations of the left lung and spleen."
ROA p. 300 L's 8-10).

The Department Of Parole And Probation's Pre-Sentence Report on page 7, states;

"The * * * Preliminary Hearing transcript reflects that * * * Dr. Graham's statement that death was caused by the wound that entered the victim's back."
"(1). The offense was committed by design."
"(3). The fatal shot was fired into the victim's back while he was attempting to flee."
"The Department Of Parole And Probation is of the opinion that there are no facts know to them that would tend to support a recommendation other than the maximum penalty."

Signed _____
Willard B. Allen, Officer
Adult Parole And Probation
District # 4, Las Vegas, Nevada
(ROA p. 522).

And the Nevada Department Of Parole And Probation has known all these many-many years, that their Pre-Sentence Report contains known to them to be blatantly

false representations, and that William Parquette was [not] shot in the back in the first instance. (ROA pp. 305-310).

And trial attorney Jeffrey D. Sobel informed the court at sentencing in regard to the Parole And Probation Report and the Department's customs, practices, policies, and procedures, that in his six (6) years of himself practicing before the court and dealing with the Parole And Probation Department that;

"I think the significance is here and I have seen it in the six years that I have been practicing on matters in front of parole boards that you have got to admit that you are guilty of the crime or you are not going to get parole,"(ROA p. 523 L's 26-30. * * * "and I know from two lie detector's test that he was given, one by an expert from Utah and one by a local lie detector operator that if Mr. Vipperman committed this offense, he really has no memory of it." (ROA 524 L's 9-12). * * * "The report (Nevada Department Of Parole And Probation Pre-Sentence Report) gives absolutely no indication why they are choosing life rather than five years. I wrote to them and I said I will give you a complete list of everybody that knows Vipperman so that you could see what sort of man he is. They never contacted me and I know they never contacted anyone of the family who has been standing behind him all of this time." (ROA p. 526 L's 16-22).

During Vipperman's first trial, he caught the prosecutors and Court Service Officer **in the act of "making deals" with jail inmates to commit perjury against Vipperman in trial, in exchange for their release from incarceration. Which is common place in Nevada, and happens in every major trial that has ever taken place in Nevada. (ROA pp. 428-430).**

In Vipperman's first trial, Scene Of The Crime Photographer Police Officer **Truman Lamb** was subornated by prosecutors to commit blatant perjury against Vipperman, in blatant violation of **NRS 199.120 which prohibits both Perjury and subornation of perjury.** Prosecutors subornated Truman Lamb to falsely testify that the back chain link fence gate to the car lot was **[open]** when he arrived on the scene of the crime and photographed the gate in an erroneous [open] position. Which those erroneous photographs were and still are, the [very key] to the entire case. For it was from those erroneous photographs, the police and prosecutors used to completely and thoroughly subornate their 100% false alleged eye witness **David Allan McPeake.** By alleging that Vipperman came though the opened back gate, shot Parquette, which was supposedly witnessed by McPeake, who was allegedly standing in the opened doorway of a paint shop which was located around four (4) different cinder block walls from the back gate. And then Vipperman allegedly exited through that supposed opened back gate. **(ROA p. 334 L. 17).**

Police Officer **Thomas H. Haney**, who prosecutors Earl Gripentrog and Jeffrey Silver accidentally failed to subornate, testified that **[he]** was the first police officer on the scene of the crime that night, and when he got there that all important back chain link gage was **[closed, and locked closed].** And further, that he climbed up on top of the gate to look for suspects that might be on top of the surrounding buildings. And further climbed on over the top of the [closed and locked closed] chain link fence gate, and down the opposite side to search the back alley for suspects. **(ROA pp. 336-343).** And neither the State nor ineffective trial/appeal counsel Jeffrey D. Sobel brought officer Thomas H. Haney forward to testify in Vipperman's Second trial.

In Vipperman's Second trial, prosecutor **Edward R. Kane** realizing that the police had been caught committing perjury in Vipperman's first trial, re-subornated police officer **Truman Lamb** to testify that the back chain link fence gate was **[closed and locked closed]** when he arrived on the scene, and someone must have opened it before he photographed it in an erroneous open position. **(ROA p. 345).**

In Vipperman's First trial, Police Officer **Dallas Kinney** testified as to being the arresting officer, and identifying certain evidence that was submitted to the jury. **(ROA 353-366).**

In Vipperman's Second trial, prosecutor **Edward R. Kane** believing he could get away with it because of the name similarity, switched witnesses and illegally and unconstitutionally produced a police officer **Delous Kiney** who he knew was a 100% false witness, and he subornated him to commit 100% blatant perjury, as to being the arresting officer. And had him identify certain evidence, which was illegally and unconstitutionally submitted to the jury through his known to him to be 100% false witness, **Delous Kiney,** who Edward R. Kane subornated to commit **100%** perjury. **(ROA pp. 367-374).**

Police Officer **Frank Jergovic** filed a Dead Body Report in this case which states;

> "The victim was **found** by his employee David McPeake **lying on the ground** in front of the paint garage. **He had heard two shots just prior to finding the victim."** **(ROA p. 352).**

And neither the State, nor ineffective trial counsel brought Detective Frank Jergovic forward to testify in either of Vipperman's trials. They have always kept him secreted.

And it is the custom, practice, policy, and procedure of the Las Vegas District Attorney's Office to threaten, incarcerate, and dissuade defense witnesses to prevent them from testifying in trials. And it is further the custom, practice, policy, and procedure of that office to subornate perjury. And further, but certainly not conclusive of, it is the custom, practice, policy, and procedure of Las Vegas prosecutors, to commit blatant perjury themselves. (ROA pp. 488-502).

Vipperman was tried by prosecutors for First Degree Murder. But, the jury in both trials not realizing that Second Degree Murder also carried a possible Life sentence, convicted him of Second Degree Murder [after] the biased and prejudiced trial judge in both trials **Carl J. Christensen ORDERED** numerous jurors who were voting for acquittal, to go back and reconsider their decisions, and deliberate more until they could reach a unanimous verdict. Vipperman was then maliciously sentenced to Life in prison with eligibility of parole after serving five (5) years. Under authority of **NRS 200.010.**

Upon Vipperman's First appearance before the Nevada Parole Board, the prison Warden and Staff recommended that Vipperman be granted parole. **(ROA pp. 600-601).** And Vipperman never in his near fifteen (15) years of imprisonment ever received any type of disciplinary action, or even a Write Up for any infraction of the rules. He was an exemplary prisoner at all times:

In **Shepard vs. Taylor**, 556 F.2d 648, 648-652 (2nd. Cir. 1977), the court held;

"An individual's institutional record is one of the most significant factors in predicting his ability to assume his place in a free society and hence, his eligibility for parole."

Citing **Moody vs. Daggett**, 429 U.S. 78, 88-90 (1976). Id at 652.

See e.g., **Edwards vs. United States**, 574 F.2d 937, 941-942 (8th. Cir. 1978) cert dismissed 439 U.S. 1040 (1978); **Benites vs. United States Parole Com'n**, 595 F.2d 518 (9th. Cir. 1978); **Garafola vs. Benson**, 505 F.2d 1212 (7th. Cir. 1974); **Adams vs. Keller**, 1354 F.2d 137 (10th. Cir. 1981).

Yet the Nevada Parole Board at all times ignored and failed and otherwise refused to give any type of due consideration to Vipperman's exemplary record while incarcerated, and prior to being incarcerated. And chose instead to deny and deprive him of parole because he would not confess to the crime he had been framed for and convicted of. And thereby clean-up the illegal and unconstitutional acts and actions of their concerts and cohorts of the Las Vegas police, prosecutors, courts, and judges, while they were acting in collusion and conspiracy with them, to deprive Vipperman of his liberty.

During Vipperman's First Parole Board Hearing, the Board questioned Vipperman about things Vipperman had never heard of before. And indicated that they had letters in their files from prosecutors and trial judge, that indicated that Vipperman had framed the prosecution witnesses. And further shot the victim in the back. And other things that Vipperman knew to be blatantly false, and he could further prove the assertions and allegations to be false. But, the Board refused to allow Vipperman the opportunity to prove their information to be false with evidence of his own. And further and additionally refused to allow Vipperman the opportunity to view, admit, deny, or controvert in any way shape or form, the false and malicious informations in their files and records, which they were relying upon to a constitutionally significant degree to deny and deprive Vipperman of his liberty and parole. And they denied Vipperman parole, and cited known

to them to be blatantly false reasons for denial of parole.

In the mean time, Vipperman's original alleged defense attorney **Harry Eugene Claiborne**, was appointed to the lower Las Vegas Federal Court as a Federal Judge.

In between Vipperman's First and Second parole board hearings, he was given information from a cousin of **Judy Ahlstrom**, secretary of federal judge Harry Eugene Claiborne, that he was present when **Harry E. Claiborne**, his secretary **Judy Ahlstrom,** and her first cousin **Nykki Kinsley**, executive secretary of the Nevada Pardon Board, and Nevada Parole Board, **[conspired] to keep Vipperman in prison for the rest of his life because he had caused Claiborne problems when he had fired him from being his alleged defense attorney.**

Vipperman near the same time obtained his court records from his trial/appeal counsel Jeffrey D. Sobel, which proved far beyond any doubt that Vipperman had in fact been framed for the murder of William Parquette by police and prosecutors, and denied and deprived of fair trials by the trial judge not only once, but twice.

Vipperman then furnished **Bryn Armstrong, Chairman of the Nevada Parole Board, and the Nevada Department Of Parole And Probation** with hundreds of court records, trial testimonies, police reports, photographs of the autopsy and scene of the crime, and signed statements and letters of witnesses, which overwhelmingly proved far beyond any type of doubt that Vipperman had in fact been framed for murder by police and prosecutors.

Vipperman then managed to inspect his prison files. And therein he discovered many documents from malicious prosecutors **Edward R. Kane, Dan Seaton, and Don Wadsworth**, who were caught red handed attempting to commit perjury in Vipperman's trials, and threatening, and dissuading defense witness to prevent them from testifying. Inter alia, inter alios. **(ROA p. 497).** Who had maliciously sent letters to the prison, department of parole and probation, and parole board, which contained know to all of them to be blatantly false allegations and charges extremely detrimental to Vipperman and his liberty.

Vipperman then petitioned [all] of those involved through the **Administrative Procedures Act, 5 U.S.C. Section 500 et seq., Freedom Of Informations Act, 5 U.S.C. Section 552 et seq.. And the Privacy Act of 1975, 5 U.S.C.(a) et seq..** To be allowed to view the designated false informations in their files. And further petitioned them for Expunction Of False Records. **(ROA pp. 80-97).** For which they **[all]** failed and refused to give Vipperman any consideration whatsoever.

Upon Vipperman's Second parole board hearing, he took a tape recorder into the hearing and left it in the room with the parole board while they deliberated behind his back. And thereby caught them [red handed] making known to them to be blatantly false assertions and allegations. And blatantly false representations about Vipperman and his legal case. And the board allowed **Nykki Kinsley** to voice her opinion, and cast an illegal and unconstitutional **VOTE** to deny Vipperman parole. And her having absolutely [no] authority to do so: Vipperman then formulated the tape recording into a transcript and filed same in the Eighth Judicial District Court of Las Vegas, incorporated as an Exhibit within a Petition For A Writ Of Habeas Corpus. **(ROA pp. 602-614).** And served only

one (1) single copy of the Petition upon the Nevada Attorney General's Office, legal counsel for the Respondents. **Only the Court, the Nevada Attorney General's Office, and Vipperman were aware of the Petition, and the transcript of the parole board hearing incorporated therein.** In their joint attempt to destroy Vipperman's Habeas Corpus action, **and the tape recording of the illegal and unconstitutional parole board hearing they conducted,** the Attorney General's Office contacted the authorities of Jean prison where Vipperman was incarcerated and told them to search for a tape recording of the parole board hearing, which was probably in Vipperman's assigned room. The prison authorities at Jean prison placed Vipperman in isolation, and stole a copy of the parole board tape recording, and gave same to a deputy Attorney General. And following the deputy Attorney General, Bryn Armstrong, and Nykki Kinsley listening to the tape recording of the illegal and unconstitutional parole board hearing Armstrong and Kinsley had conducted at the Jean prison, the three of them, conspiratorially, and collusively, formulated a known to all three of them to be a blatantly perjurious **Affidavit**, signed under oath by Kinsley, attesting that she did not know of any tape recording of a parole board hearing. And that she **[did not] voice her opinion or vote in parole board determinations. (ROA p. 619).** And the deputy Attorney General then filed the known to him to be perjurious Affidavit into Vipperman's Habeas Corpus action, which caused and resulted in, great, immediate, and irreparable damage and harm to Vipperman's Habeas Corpus action against the Nevada Department Of Parole, and the Nevada Parole Board. And they then retaliated against Vipperman by keeping him in prison for the following seven (7) years, until he filed a Civil Rights Complaint against them and a total of 47 defendants in the lower federal court. Which was titled **Vipperman vs. City Of Las Vegas, et al.**, Case No. CV-LV-

86-315 HDM (U.S. D.C. S.NV. 1986). Which caused the Nevada Department Of Parole And Probation, and the Nevada Parole Board, to realize they were in serious trouble, so they finally granted Vipperman parole after him serving over fourteen years (14) years imprisoned. Twice as long as all others convicted of Second Degree Murder, and longer than many convicted of First Degree Murder. And then of course, the Las Vegas federal court wrongfully granted the defendant's frivolous Motions to Dismiss, and allowed [all] forty seven (47) defendants to escape liability with impunity.

Vipperman filed three (3) Petitions For A Writ Of Habeas Corpus in the Eight Judicial District Court of Las Vegas, Nevada. Challenging **his illegal and unconstitutional conviction, and the Nevada Department Of Parole And Probation, and Nevada Parole Board. For their joint and conspiratorial illegal and unconstitutional acts and actions against Vipperman.**

They were titled; **Vipperman vs. State Of Nevada; Eighth Judicial District Court,** Case No. C-25696. **Vipperman vs. State Of Nevada; Nev. St. Prison Dir. Vernon Housewright and Attorney General Brian McKay**, Case No. C-25696. **Vipperman vs. State Of Nevada; Nev. Prison; and Nev. Dept Of Parole**, Case No. C-25696.

The Nevada Eighth Judicial District Court Of Las Vegas, Nevada, buried, covered-up, and failed and otherwise refused to act upon the petitions, or in any manner, shape, or form, inquire into the issues presented to the Court for consideration and review. The Court while conspiratorially covering-up for each other, and their concerts and cohorts of the State Of Nevada, discarded all efforts by Vipperman and his Motions for the appointment of counsel, and the issuance of an Order To Show Cause, and Motion to conduct an Evidentiary Hearing. The court covered-up the petitions for four (4) long

years, and then summarily dismissed them without ever informing Vipperman, or inquire into a single issue presented to the court in the petitions for review and consideration. **See; letter to Judge O'Donnell (ROA pp. 241-244).**

The Nevada Supreme Court refused to allow Vipperman to support his petitions for writs of habeas corpus, supra, or file an opening brief in that court. They simply chose instead to cover-up the petitions for over a year, and then summarily dismissed them without ever inquiring into a single issued presented in the petitions.

Vipperman, after being exhausted by State courts, then filed a Petition For A Writ Of Habeas Corpus in the lower Las Vegas Federal court. Titled; **Vipperman vs. George Sumner**, Case No. CV-LV-86-LDG (U.S. D.C. S. NV. 1986). **(ROA pp. 204-240).**

Challenging his illegal and unconstitutional conviction. That court; **(Harry Eugene Claiborne's Court)** covered-up the petition for five (5) long years, and failed and refused to appoint moved for assistance of counsel, issue a moved for Order To Show Cause, or conduct a moved for Evidentiary Hearing. And summarily denied the petition five years later, without ever having inquired into a single issue presented to the state and federal courts. All in blatant disregard for this court's holdings in **Townsend vs. Sain**, 372 U.S. 293, 312-13 (1963).

Carl J. Christensen, trial judge in both of Vipperman's trials was removed from the bench for taking a $300,000.00 bribe from Casino Owner Benny Binion, through his close friend federal judge Harry E. Claiborne, to cover-up a murder case against his son Ted Binion. **(ROA pp. 189-190).**

Earl Gripentrog, the state prosecutor that originally helped frame Vipperman for murder and railroaded him through the first trial, and have his defense witnesses threatened, and incarcerated to prevent them from testifying, was fired from the District Attorney's Office immediately following Vipperman's first trial, for "getting caught" in his horrendous acts and actions, and allowing the defense to find Norman Patchell and Nancy Parker. And the outrageous newspaper publicity it caused the District Attorney's Office. He then went into private practice. And a few years later "was caught" trying to bribe a Las Vegas Judge. Which the bribing of Las Vegas judges is common place. But, you are not supposed to "get caught". As Gripentrog did. After the F.B.I. threatened to take action if the Las Vegas District Attorney's Office did not, Gripentrog "made a deal" and was convicted and imprisoned. **(ROA pp. 191-195).**

John Mowbray and Noel Manoukian, two of the Nevada Supreme Court judges and very close friends of federal judge Harry E. Claiborne that helped cover-up Vipperman's direct appeal and habeas corpus action in their court, were caught in a scandal with Claiborne, and managed to slither out of it because of being part and parcel of the "Nevada Good Ole Boys". **ROA pp. 196-203A).**

Harry Eugene Claiborne, Vipperman's original alleged defense attorney who had since became a Federal Judge, who allowed this horrendous miscarriage of justice to begin in the first instance, and covered-up in his court, **was convicted of committing crimes while setting on the Las Vegas, Nevada federal court bench, imprisoned, and impeached from Office: (ROA pp. 179-188).**

Vipperman, in his Civil Rights Complaint in this action, under authority of 42 U.S.C. Sections 1983, 1985(3), and 1986, charged the defendants with inter alia, inter alios, that;

> They were "employed by the Nevada Department Of Parole And Probation, and acting in his individual and official capacities, in collusion and conspiracy with other named defendants and concerts and cohorts, under color of law, at all relevant times complained of herein."

And under his **LEGAL CLAIMS** at page 6 of the complaint, charged that;

> "The facts related above and herein, disclose a concerted, systematic, and conspiratorial effort by the Defendant Nevada Department Of Parole And Probation, through their agents, employees, concerts and cohorts in office, Police, Prosecutors, Trial Judge, Defense Counsels, and Legal Counsels of the Nevada Attorney General's Office, to deprive the Plaintiff of his Liberty and Constitutional Rights. Including, but not limited to, those enumerated above, and those enumerated in the succeeding paragraphs and causes of action. **Pursuant to their Practiced Policies and Procedures. <u>And absolute abuse of discretion. Exhibits 14, 14-A, 15, 16.</u>**"

"The charges and language following and above are to be applied and considered as if stated in each and every charge herein."

"The illegal, unconstitutional, unethical, arbitrary, and capricious acts, actions, and inactions of the Defendants that are described above and below and complained of herein, were committed by the Defendants wilfully, wantonly, maliciously, and intentionally, pursuant to collusion and conspiracy between the Defendants, through meetings of the minds, and

each other. And carried out in a callous reckless disregard for the Plaintiff, and his Civil and Constitutional Rights. With an invidious discriminatory intention and design to deprive the Plaintiff of his Liberty, Freedom, and Property interests. And the Equal Protection of the laws. Both State and Federal. While denying and depriving the Plaintiff of all aspects of Due Process of law. For the intentional purposes of violating rights secured to the Plaintiff through the **First, Fourth, Fifth, and Fourteenth Amendments to the Constitution Of The United States. And State and Federal laws."**

And in his **FOURTH CAUSE OF ACTION** at page 12, charged the defendants with;

"While acting in collusion and conspiracy with vindictive prosecutors, trial judge, Police, and numerous Authorities of the Nevada State Prison System; the Defendant Nevada Department Of Parole And Probation, through their Agents, employees, concerts, and cohorts, and members of the Nevada Parole Board and its Commissioners and Hearing Officers, have **solicited; and maliciously disseminated;** and filed in their records, known to them to be false, fabricated, perjurious, and otherwise harmful documents against the Plaintiff. And they have further disseminated same to others, which has caused a great, immediate, and irreparable damage and harm to the Plaintiff, and his liberty and freedom interests. And they have further relied upon same to a constitutional significant degree to deprive the Plaintiff of his liberty and freedom. And have further but not conclusive of, collusively and conspiratorially suppressed same from the Plaintiff, and denied and deprived him of being informed of, confronted with, or the opportunity to admit, deny, or controvert same. Which has caused, and resulted in, great, immediate, and irreparable damage and harm to the Plaintiff's legal actions, and his liberty, property, and freedom interests. And the Plaintiff has moved them through

petitions brought under the **ADMINISTRATIVE PROCEDURES ACT, 5 U.S.C. SECTION 500 ET SEQ., THE FREEDOM OF INFORMATION ACT, 5 U.S.C. SECTION 552, and THE PRIVACY ACT OF 1974, 5 U.S.C. SECTION 552(a) et. seq.,** and the regulations promulgated thereunder. Moved them to be allowed to view the adverse files in their possession. And further, but not conclusive of, moved them for **EXPUNCTION OF FALSE RECORDS**. And they have ignored, refused, and denied and deprived the Plaintiff of all considerations. Pursuant to their illegal and unconstitutional **Practices, Policies and Procedures. And absolute Abuse Of Discretion. Exhibits 22, 23, 24.**"

This High Court in **Monell vs. New York City Dept. Of Social Services**, 436 U.S. 658 (1978), held;

"We conclude, therefor, that local government may not be sued under 1983 for an injury inflicted solely by its employees or agents. Instead, **it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury, that the government as an entity is responsible under 1983.**

Such is the case before this court. In that the illegal, unconstitutional, wilful, wanton, malicious, egregious, acts, actions, and inactions of the defendants/respondents, are in fact their **customs, practices, policies, and procedures. Pursuant to their absolute abuse of discretion.**

In Hafer vs. Melo, 502 U.S. 21 (1991), this High court held;

"We hold that state officials, sued in their individual capacities, are "persons" within the meaning of 1983. The Eleventh Amendment does not bar such suits, nor are state officers absolutely immune from personal liability under 1983 solely by virtue of the "official" nature of their acts."

In Pain vs. Baker, 595 F.2d 197 (4th. Cir. 1979) cert denied 444 U.S. 925, the court held;

"We hold today that in certain limited circumstances a claim of constitutional magnitude is raised where a prisoner alleges (1) that information is in his file, (2), that the information is false, and (3) that it is relied upon to a constitutionally significant degree. * * * Id at 201.

The requirement of reliance to a constitutionally significant degree has two dimensions. The first is the nature of the adverse administrative decision made on the basis of erroneous information. If the information is relied on to deny parole or statutory good-time credits, or revoke probation or parole, the inmate's constitutional liberty interest is at stake and the due process clause is called into play. See Franklin vs. Shields, 569 F.2d 800 (4th. Cir. En banc), aff'g in part and rev'g in part 569 F.2d 784 (4th. Cir. 1977), cert den 435 U.S. 1003 (1978); Wolf v. McDonnell, 418 U.S. 539 (1974); Gagnon v. Scarpelli, 411 U.S. 778 (1973); Morrisey v. Brewer, 408 U.S. 471 (1972).

We think a well pleaded complaint alleging such circumstances would be sufficient. In a close case, however, the benefit of the doubt should be given the inmate. Id at 202.

Vipperman has been convicted, sentenced, denied parole, his parole has been revoked, and he has been denied and deprived of being released from parole, all because of the respondent's reliance upon to a constitutionally significant degree, false informations they have conspiratorially fabricated, solicited, disseminated, and filed in their records pertaining to Vipperman. And they have absolutely refused and failed to give him the opportunity to view, admit, deny, or controvert their false informations in any way shape or form. Or give any type of due consideration to favorable and exculpatory evidence in Vipperman's favor.

The Respondents have always had a **[duty]** to investigate and verify the informations in their files. **Jones v. Johnson**, 402 F. Supp. 992 (U.S. D.C. Pa. 1975).

See e.g., **Robinson v. United States Board Of Parole**, 403 F. Supp. 638, 642-643 (U.S. D.C. N.Y. 1975); **Tunks v. Sigler**, 427 F. Supp 455 (U.S. D.C. Cal. 1976); **Franklin v. Shields**, 569 F.2d 784, (4th. Cir. In Banc 1977), cert denied 435 U.S. 1000 (1978); **Bradford v. Weinstein**, 519 F.2d 732 (4th. Cir 1975); **Williams v. Missouri Bd. Of Probation and Parole**, 616 F.2d 697 (8th. Cir. 1981) cert denied 455 U.S. 993; **Evans v. Dillahunty**, 662 F.2d 522 (8th. Cir. 1981); **Dixon v. Hadden**, 550 F. Supp. 157 (U.S. D.C. Colo. 1982).

"Petitioner must of course be afforded access to reports or documents relied upon by the Commission and the opportunity to challenge their contents." **Joost v. U.S. Parole Commission**, 698 F.2d 418, 420 (10th. Cir 1983); **In re Prewit**, 503 P.2d 1326 (S.Ct. Cal. 1972); **Hearn v. Nelson**, 496 F. Supp. 1111 (U.S. D.C. Conn. 1980).

N.R.S. 176.156 Provides: 1. "The court [shall] disclose to the district attorney, [to] the counsel for the defendant and [to] the defendant, the factual content of the report of the pre sentence investigation and the recommendations of the probation service and afford an opportunity to each party to comment thereupon."

The Pre-sentence Report in this case that contains blatantly false information, and is relied upon by the respondents to a constitutionally significant degree, was secreted and suppressed from the Petitioner for many-many years, until he finally obtained same from his alleged trial/appeal counsel only after threatening a law suit against him.

"The touchstone of due process is protection of the individual against arbitrary action by government." **Dent v. West Virginia**, 129 U.S. 114 (1889); **Wolf v. McDonnell**, 418 U.S. 539 (1974); **Block v. Potter**, 631 F.2d 233, 235 (3rd. Cir. 1980).

REASONS FOR GRANTING THE PETITION

The illegal and unconstitutional conspiracy charged and complained of began when Vipperman was originally arrested on or about April 20, 1973, and has continued unabated through this very date: And the latest overt act committed by the defendants/respondents that damages have flowed from is May 1, 2000 **(ROA p. 11)**. And Vipperman timely filed his Civil Rights Complaint in this action on November 13, 2000. All of the defendants/respondents had knowledge of the illegal and unconstitutional acts and actions that were being committed against Vipperman, and they had the power to prevent or aid in the preventing of the commission of the same, and they neglected and refused and failed to do so.

The Nevada Division Of Parole And Probation and its administrators, agents, and parole and probation officers, and the Nevada Parole Board, are totally and completely out of control. The Nevada Attorney General's Office defends their illegal and unconstitutional acts and actions, and the State and Federal Courts of Nevada protect them. Therefore, they have absolutely no fear of the law, or of being held accountable and/or liable for their illegal and unconstitutional acts and actions, conducted pursuant to their customs, practices, policies, and procedures, and absolute abuse of discretion. For they sincerely consider themselves far above all laws. And **[because]** the Nevada courts, state and federal give them total and complete discretion, and refuse to hold them accountable in any way shape or form, they have **[no]** fear of violating constitutional rights of all others. For they know they will be protected by the courts of Nevada, and the Ninth Circuit Court Of Appeals. As the circuit courts are divided on many of the issues presented in this action.

Therefore; the Constitutional Rights of tens of thousands of lives in Nevada are being violated and abused continually. And same will never cease in Nevada, or many other States, unless this court holds them liable and accountable for their illegal and unconstitutional acts, actions, and inactions.

CONCLUSION

For all of the reasons above, and justice, the petition for a writ of certiorari should be granted.

Dated this 19th. Day of September, 2003.

Respectfully submitted;

Franklin D. Vipperman

Franklin D. Vipperman
3000 So. Sandhill Rd. # 103
Las Vegas, NV. 89121
702-207-6356
Plaintiff/Petitioner In Pro se